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KRAMER LEVIN NAFTALIS & FRANKEL LLP INTELLECTUAL PROPERTY DEPARTMENT 1177 AVENUE OF THE AMERICAS NEW YORK, NY 10036			EXAMINER LIVERSEDGE, JENNIFER L	
			ART UNIT	PAPER NUMBER
			3628	

DATE MAILED: 08/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/900,724

**Applicant(s)**

SQUYRES, JAMES GATELY

**Examiner**

Jennifer Liversedge

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

This Office Action is responsive to Applicant's amendment and request for reconsideration of application 09/900,724 filed June 15, 2006. The amendment contains the following:

The amendment contains original claims: 1-23, 25-33

The amendment contains amended claims: 24

The amendment contains previously presented claims: 34-42

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1-4, 6, 8-10, 12-14, 17, 26, 34-35 and 37-42 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,012,042 to Black (further referred to as Black).

Regarding claim 1, Black discloses a method for evaluating an investment portfolio (column 1, lines 20-23) comprising accessing data for a plurality of companies in an investment portfolio (column 1, lines 40-44; column 2, lines 63-67; column 3, lines

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44-50); fiscally realigning the data (column 3, lines 4-6 and 59-61; column 4, lines 21-26; column 9, lines 55-63); calculating at least one predetermined set of values for each company using the fiscally realigned data (column 4, lines 45-54; column 5, lines 18-42; column 6, lines 37-47); aggregating the at least one predetermined set of values to create aggregated values for the investment portfolio (column 6, lines 37-47; column 9, lines 55-63); creating a performance indicator as a function of the aggregated values (column 3, lines 44-50; column 9, lines 55-63; column 10, lines 57-67).

Regarding claim 2, Black discloses wherein the data includes historical financial data for the plurality of companies (column 3, lines 44-50 and lines 61-64).

Regarding claim 3, Black discloses wherein the historical financial data is accessed from a database (column 4, lines 20-32).

Regarding claim 4, Black discloses wherein the historical financial data is based on financial disclosures by each of the plurality of companies (column 1, line 65 – column 2, line 7).

Regarding claim 6, Black discloses wherein fiscally realigning comprises converting the data from a fiscal year basis to a comparable calendar year basis (column 3, lines 50-61; column 7, lines 14-17; column 9, lines 55-63).

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Regarding claim 8, Black discloses wherein the fiscal year basis includes a fiscal day, a fiscal month, and a fiscal year (column 1, lines 51-64).

Regarding claim 9, Black discloses wherein the comparable calendar year basis includes a calendar day, a calendar month, and a calendar year (column 7, lines 14-17; column 9, lines 55-63).

Regarding claim 10, Black discloses wherein the fiscally realigning includes eliminating data for any of the plurality of companies lacking a comparable fiscal year (column 5, line 42-column 6, line 13).

Regarding claim 12, Black discloses wherein fiscally realigning comprises converting a fiscal period for each of the plurality of companies into a comparable calendar period (column 3, lines 4-6 and 59-61; column 7, lines 14-17).

Regarding claim 13, Black discloses wherein the fiscal period includes one of a one-year period, and a quarterly period (column 1, lines 54-58; column 6, lines 49-52).

Regarding claim 14, Black discloses wherein converting each fiscal period includes deriving a calendar-based date for the fiscal period and realigning the financial data using the calendar-based date (column 3, lines 4-6 and lines 59-61; column 4, lines 22-25; column 7, lines 14-17).

Regarding claim 17, Black discloses wherein the at least one predetermined set of values includes a fundamental financial measure (column 6, lines 36-47; column 8, lines 47-49; column 9, lines 55-63; column 10, lines 57-67).

Regarding claim 26, Black discloses the method wherein the investment portfolio includes one of a mutual fund, a pension fund or other investment portfolio (column 1, lines 40-45).

Regarding claim 40, Black discloses the method wherein the performance indicator includes a fundamental financial measure (column 6, lines 36-47; column 8, lines 47-49; column 9, lines 55-63; column 10, lines 57-67).

Regarding claim 41, Black discloses the method wherein the fundamental financial measure includes one of a growth measure, a profitability measure, a capital measure, a valuation measure, a sales growth value, a profit margin value, an equity:assets value, an interest coverage value, a cash flow:debt service value, a price earnings value and a price:book value (column 10, lines 16-20).

Regarding claim 42, Black discloses a method for evaluating an investment portfolio (column 1, lines 20-23) comprising accessing data for a plurality of companies in an investment portfolio (column 1, lines 40-44; column 2, lines 63-67; column 3, lines

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44-50); fiscally realigning the data (column 3, lines 4-6 and 59-61; column 4, lines 21-26; column 9, lines 55-63); calculating at least one predetermined set of values for each company using the fiscally realigned data (column 4, lines 45-54; column 5, lines 18-42; column 6, lines 37-47); aggregating the at least one predetermined set of values to create aggregated values for the investment portfolio (column 6, lines 37-47; column 9, lines 55-63); and evaluating the investment portfolio as a function of the aggregated values (column 3, lines 44-55; column 9, lines 55-63; column 10, lines 57-67).

Regarding claim 34, Black discloses a method for evaluating an investment portfolio (column 1, lines 20-23) comprising accessing data for a plurality of companies in an investment portfolio (column 1, lines 40-44; column 2, lines 63-67; column 3, lines 44-50); fiscally realigning the data (column 3, lines 4-6 and 59-61; column 4, lines 21-26; column 9, lines 55-63) to exclude data for any company in the investment portfolio that lacks data for an entire evaluation period and to include data for any company in the investment portfolio that has data for the entire evaluation period (column 5, line 42-column 6, line 13); calculating at least one predetermined set of values for each company using the fiscally realigned data (column 4, lines 45-54; column 5, lines 18-42; column 6, lines 37-47); aggregating the at least one predetermined set of values to create aggregated values for the investment portfolio (column 6, lines 37-47; column 9, lines 55-63); creating a performance indicator as a function of the aggregated values (column 3, lines 44-50; column 9, lines 55-63; column 10, lines 57-67).

Regarding claim 35, Black discloses the method wherein the entire evaluation period includes a user-defined evaluation period (column 1, lines 54-58; column 9, lines 55-63; column 10, lines 57-67).

Regarding claim 37, Black discloses a method for evaluating and comparing investment portfolios (column 1, lines 20-23) comprising accessing data for a plurality of companies in a first investment portfolio and in a second investment portfolio (column 1, lines 40-44; column 2, lines 63-67; column 3, lines 44-50); fiscally realigning the data (column 3, lines 4-6 and 59-61; column 4, lines 21-26; column 9, lines 55-63); calculating at least one predetermined set of values for each company in each of the first and second portfolios using the fiscally realigned data (column 4, lines 45-54; column 5, lines 18-42; column 6, lines 37-47); aggregating the at least one predetermined set of values to create aggregated values for each of the first and second investment portfolios (column 6, lines 37-47; column 9, lines 55-63); creating a performance indicator as a function of the aggregated values for each of the first and second investment portfolios (column 3, lines 44-50; column 9, lines 55-63; column 10, lines 57-67); and ranking the first and second investment portfolios as a function of the performance indicator (column 2, lines 28-35).

Regarding claim 38, Black discloses the method wherein the performance indicator includes more than one performance indicator (column 9, lines 55-63).



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Regarding claim 39, Black discloses the method wherein the ranking includes ranking the first and second investment portfolios as a function of the more than one performance indicator (column 2, lines 28-35; column 9, lines 55-63).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Black and "Vertex Interactive Chosen Among Top 100 Leading Edge Supply Chain Vendors by Supply Chain e-Business" in Business Wire, June 27, 2001 (further referred to as Vertex). Black does not disclose wherein the financial disclosures include one of 10-K filings and 10-Q filings. However, Vertex discloses wherein the financial disclosures include one of 10-K filings and 10-Q filings (page 2, lines 26-31). It would be obvious to

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one of ordinary skill in the art to combine the use of 10-K filings and 10-Q filings as disclosed by Vertex with the company reporting as disclosed by Black. The motivation would be that company disclosures would include the required 10-K filings and 10-Q filings and would therefore be part of the available information regarding a companies performance.

Claims 7, 11, 15-16 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Black.

Regarding claim 7, Black discloses wherein the fiscally realigned data provides a comparable comparison period for the plurality of companies (column 3, lines 4-6 and 44-61). Black does not disclose the comparable comparison period having one of two of three months in common for a desired fiscal quarter and forty-eight of sixty months in common for a five year fiscal period. However, this is design choice and is a non-critical parameter. Black allows for the adjustment of data regardless of how much data overlaps or does not overlap and for representing the data in a calendar format for comparison purposes. The overlap values as cited in the current application, as well as other overlap values, would fall within the method disclosed by Black. It would be obvious to adapt various overlap values, the motivation being to integrate company financial data across timelines for comparison purposes.

Regarding claim 11, Black does not disclose wherein the comparable fiscal year includes a fiscal year having between fifty weeks and fifty-four weeks. However, by definition, a fiscal year spans 12 consecutive months, 52 consecutive weeks, 13 four-week periods, or 365 consecutive days (i.e., Dictionary of Finance and Investment Terms, Barron's Educational Series, by John Downes and Jordan Elliot Goodman). It would be obvious to state the fiscal year as spanning between fifty weeks and fifty-four weeks, the motivation being to use commonly accepted principals for defining a fiscal year.

Regarding claim 15, Black does not disclose wherein deriving the calendar-based date includes if a last day of the fiscal period ends between the first and fifteenth day of a fiscal month, then the fiscal period is realigned to a month preceding the fiscal month; and if the last day of the fiscal period is after the fifteenth day of the fiscal month, then the fiscal period retains the fiscal month. However, the practice of using "IF-THEN" functions to perform rounding and variable-assignment functions is old and well known. It would be obvious to round the dates as claimed in the present application if it were desired to group dates in a monthly format. The motivation would be to appropriately group mid-month dates using known functions.

Regarding claim 16, Black does not disclose wherein realigning the financial data includes for a five year period, if a last month of the fiscal period is between July and December, a calendar year assigned to the fiscal period is the same as the year of the

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fiscal period, and if the last month of the fiscal period is between January and June, then the calendar year assigned to the fiscal period is one year less than the year of the fiscal period; for up to a one year period, if the last month of the fiscal period is one of January, April, July and October, then a calendar quarter is assigned to the fiscal period as ending a month preceding the last month of the fiscal period, otherwise, the calendar quarter is assigned to the fiscal period as ending the last month of the fiscal period. However, the same reasoning, obviousness, and motivation for claim 15 apply regarding assignment of dates and variables in this claim.

Regarding claim 36, Black discloses the method wherein the user-defined evaluation period includes one of a day, a week, a month, and a year (column 1, lines 54-58; column 6, lines 49-52; column 9, lines 55-63). Black does not disclose three months, six months, two years and five years. However, with regards to these user-defined periods, this is design choice and is a non-critical parameter. Black allows for the adjustment of data regardless of how much data overlaps or for how long the data spans and for representing the data in a calendar format for comparison purposes. The evaluation periods as cited in the current application, as well as other evaluation periods, would fall within the method disclosed by Black. It would be obvious to adapt various evaluation period values, the motivation being to integrate company financial data across timelines for comparison purposes.

Claims 18-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Black as applied to claims 1 and 17 above, and further in view of U.S. Patent No. 6,850,897 B2 to Paquette (further referred to as Paquette).

Regarding claim 18, Black does not disclose wherein the fundamental financial measure includes one of a growth measure, a profitability measure, a capital structure measure and a valuation measure. However, Paquette discloses wherein the fundamental financial measure includes one of a growth measure, a profitability measure, a capital structure measure and a valuation measure (column 3, lines 48-53). It would be obvious to one of ordinary skill in the art to combine the use of fundamental financial measures such as those disclosed by Paquette with the security analysis system as disclosed by Black. The motivation would be to use measures which are well known and commonly used when evaluating a company's financial data.

Regarding claim 19, Black discloses wherein the growth measure includes one of a sales growth value, an earnings per share value and common equity per share value (column 10, lines 16-20).

Regarding claim 20, Black does not disclose wherein the profitability measure includes one of a return on equity value and a profit margin value. However, Paquette discloses wherein the profitability measure includes one of a return on equity value and a profit margin value (Figure 1). It would be obvious to one of ordinary skill in the art to

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combine the use of fundamental financial measures such as those disclosed by Paquette with the security analysis system as disclosed by Black. The motivation would be to use measures which are well known and commonly used when evaluating a companies financial data.

Regarding claim 21, Black does not disclose wherein the capital structure measure includes one of an equity:assets value, an interest coverage value and a cash flow:debt service value. However, Paquette discloses wherein the capital structure measure includes one of an equity:assets value, an interest coverage value and a cash flow:debt service value (column 5, lines 22-28). It would be obvious to one of ordinary skill in the art to combine the use of fundamental financial measures such as those disclosed by Paquette with the security analysis system as disclosed by Black. The motivation would be to use measures which are well known and commonly used when evaluating a companies financial data.

Regarding claim 22, Black discloses wherein the valuation value includes one of a price:earnings value and a price:book value (column 2, lines 8-22).

Regarding claim 23, Black discloses the performance indicator including the aggregated values for substantially all of the plurality of companies (column 3, lines 44-58). Black does not disclose wherein the performance indicator includes one of a growth indicator, a profitability indicator, a capital structure indicator and a valuation

indicator. However, Paquette discloses wherein the fundamental financial measure includes one of a growth measure, a profitability measure, a capital structure measure and a valuation measure (column 3, lines 48-53). It would be obvious to one of ordinary skill in the art to combine the use of fundamental financial measures such as those disclosed by Paquette with the security analysis system as disclosed by Black. The motivation would be to use measures which are well known and commonly used when evaluating a company's financial data.

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Black and Paquette, and further in view of U.S. Patent No. 6,976,000 B1 to Manganaris et al (further referred to as Manganaris). Neither Black nor Paquette disclose the method wherein the aggregated values include at least one predetermined set of values for a respective one of a plurality of companies having a negative base value. However, Manganaris discloses the method wherein the aggregated values include at least one predetermined set of values for a respective one of a plurality of companies having a negative value (column 6, lines 58-67). It would be obvious to use the combination of negative values in an aggregate when comparing a collection of items (be they companies, groups of stocks, a group of goods to be purchased as specified by Manganaris) as disclosed by Manganaris with the security analysis system as disclosed by Black and Paquette. The motivation would be to use the values as calculated, and not drop negative values as is done in some cases, such as to provide investors with the full data set in reviewing rated securities.

Claims 25, 27 and 32-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Black and further in view of U.S. Patent No. 5,819,238 to Fernholz (further referred to as Fernholz).

Regarding claim 25, Black does not disclose wherein aggregating the at least one predetermined set of values includes weighing the data for each of the plurality of companies based on a value of each company as a percentage of the plurality of companies. However, Fernholz discloses wherein aggregating the at least one predetermined set of values includes weighing the data for each of the plurality of companies based on a value of each company as a percentage of the plurality of companies (column 1, lines 47-62). It would be obvious to one of ordinary skill in the art to combine the use of weights as disclosed by Fernholz with the security analysis system as disclosed by Black. The motivation would be that when examining a portfolio or mutual fund, etc. comprised of various companies and/or investments, the investor desires to know how much each component comprises and determining weights in the common approach to this information.

Regarding claim 27, Black does not disclose the method wherein each of the plurality of companies is identified by a CUSIP member. However, Fernholz discloses the method wherein each of the plurality of companies is identified by a CUSIP member (column 18, lines 24-31). It would be obvious to one of ordinary skill in the art to



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combine the use of identifying an organization using the CUSIP number as disclosed by Fernholz with the security analysis system as disclosed by Black. The motivation would be to use a commonly used and known identifier for companies when compiling and comparing data for a variety of companies.

Regarding claim 32, Black discloses a method for evaluating an investment portfolio (column 1, lines 20-23) comprising accessing data for a plurality of companies in an investment portfolio (column 1, lines 40-44; column 2, lines 63-67; column 3, lines 44-50); fiscally realigning the data (column 3, lines 4-6 and 59-61; column 4, lines 21-26; column 9, lines 55-63); calculating at least one predetermined set of values for each company using the fiscally realigned data (column 4, lines 45-54; column 5, lines 18-42; column 6, lines 37-47); aggregating the at least one predetermined set of values to create aggregated values for the investment portfolio (column 6, lines 37-47; column 9, lines 55-63); creating a performance indicator as a function of the aggregated values (column 3, lines 44-50; column 9, lines 55-63; column 10, lines 57-67).

Black does not disclose a method for identifying one of a number of holdings and a value of holdings at a first predetermined time for an investment portfolio; identifying one of a number of completely new holdings and a value of the completely new holdings at a second predetermined time for the investment portfolio; identifying one of a number of completely sold holdings and a value of the completely sold holdings at the second predetermined time for the investment portfolio.

However, Fernholz discloses a method for evaluating an investment portfolio, comprising identifying one of a number of holdings and a value of holdings at a first predetermined time for an investment portfolio (column 21, lines 16-23; column 22, lines 14-18); identifying one of a number of completely new holdings and a value of the completely new holdings at a second predetermined time for the investment portfolio (column 20, lines 35-62; column 21, lines 16-23; column 22, lines 14-18); identifying one of a number of completely sold holdings and a value of the completely sold holdings at the second predetermined time for the investment portfolio (column 20, lines 35-62; column 21, lines 16-23; column 22, lines 14-18). It would be obvious to combine the evaluation of holdings and trades as disclosed by Fernholz with the security analysis system as disclosed by Black. The motivation would be to determine the value of the portfolio based on newly sold and newly acquired elements in the portfolio in order to know the total value therein.

Neither Black nor Fernholz does not disclose summing one of (a) the number of completely new holdings and the number of completely sold holdings and (b) the value of the completely new holdings and the value of the completely sold holdings; dividing the summed value by one of the number of holdings of the first predetermined time and the value of holdings at the first predetermined time to produce a stability ratio; and generating a multivariate analysis of the investment portfolio using at least one performance indicator and the stability ratio. However, the method of combining, through addition and subtraction, various values from a financial measure perspective and then creating a ratio by then dividing by another of a financial measure for use in

multivariate analysis is common practice and well known. The motivation for doing such calculations would be to use financial measures to evaluate the investment portfolio from which the values were obtained.

Regarding claim 33, Black discloses the method wherein the investment portfolio includes a plurality of investment portfolios (column 1, lines 40-45; column 3, lines 44-50).

Claims 28-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,819,238 to Fernholz (further referred to as Fernholz).

Regarding claim 28, Fernholz discloses a method for evaluating an investment portfolio, comprising identifying one of a number of holdings and a value of holdings at a first predetermined time for an investment portfolio (column 21, lines 16-23; column 22, lines 14-18); identifying one of a number of completely new holdings and a value of the completely new holdings at a second predetermined time for the investment portfolio (column 20, lines 35-62; column 21, lines 16-23; column 22, lines 14-18); identifying one of a number of completely sold holdings and a value of the completely sold holdings at the second predetermined time for the investment portfolio (column 20, lines 35-62; column 21, lines 16-23; column 22, lines 14-18).

Fernholz does not disclose summing one of (a) the number of completely new holdings and the number of completely sold holdings and (b) the value of the completely

new holdings and the value of the completely sold holdings; dividing the summed value by one of the number of holdings of the first predetermined time and the value of holdings at the first predetermined time to produce a stability ratio; evaluating the investment portfolio as a function of the stability ratio. However, the method of combining, through addition and subtraction, various values from a financial measure perspective and then creating a ratio by then dividing by another of a financial measure is common practice and well known. The motivation for doing such calculations would be to use financial measures to evaluate the investment portfolio from which the values were obtained.

Regarding claim 29, Fernholz discloses the method wherein the investment portfolio includes one of a mutual fund, a pension fund or other investment portfolio (column 1, lines 30-35).

Regarding claim 30, Fernholz discloses the method wherein the second predetermined time is sex months after the first predetermined timed (see "any such desired interval" column 5, lines 5-14).

Regarding claim 31, Fernholz does not disclose the method wherein evaluating includes assigning a rating to the investment portfolio having a relationship to the stability ratio. However, it would be obvious to one of ordinary skill in the art to assign a rating when reviewing financial measure data. The motivation would be to rate the

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companies or portfolios being reviewed such that decisions could be made based on the calculated ratios and measures.

### ***Response to Arguments***

Applicant argues on page 13 that "...traditional analysis of, for example, mutual funds, do not analyze comparable time periods (e.g., substantially aligned time periods) for holdings in the mutual fund or investment portfolio." However, Examiner points to the Black reference wherein is disclosed the security analysis system enabling comparison of mutual funds (column 1), a plurality of securities and families of securities, etc. (column 3). Regarding time periods, Black discloses where price information includes open high and low, as well as close and where prices can be collected and analyzed on an hourly, weekly, monthly and yearly basis (column 1 and column 9). Further, Black aligns data in order to provide comparisons and where empty elements are removed such that "analysis calculations combining time-dependent values from two or more related series are made" (column 6) and the resulting data is substantially aligned.

Applicant argues on page 13 that the claimed invention is directed to inclusion of negative base values.

Applicant argues on page 14 that the claimed invention includes evaluating an investment portfolio by generating a stability ratio based on the number of and value of completely new and completely sold holdings in an investment portfolio.

Applicant argues on page 16 differences between Black's method of "alignment" and the method of "realignment" in the present applicant and on page 19 that Black does not describe how data for companies using different calendar quarter periods should be added. The recording of daily open and close prices, as well as the recording of quarterly and annual filings in the required 10Q and 10K reports are both known. Companies are required to file data on an established period, such as quarterly or yearly. Data is also gathered daily where trading on the open market occurs. Realignment of data occurs in filing of such reports. Data must be reported at given times and alignment to these dates occurs therein and rounding of data from a day which is not consistent with the data of required submission, such that quarterly filings are met. The present application discloses rounding of data to particular period dates, such that data received, for example, five days after a quarter would be rounded back to the previous quarter. Or data received closer to the end of the month than the front of the month would be rounded to the end of the month. This is consistent with providing data at required intervals, regardless of when such data is calculated or received. Rounding of dates around data is old and well known for meeting filing requirements such as 10Q and 10K reports.

Applicant argues on page 16 that "Black analyzes companies one at a time and does not analyze stock portfolios or other investment portfolios containing multiple companies. However, Examiner points to the Black reference wherein is disclosed the security analysis system enabling comparison of mutual funds (column 1), a plurality of securities and families of securities, etc. (column 3).

Applicant argues on page 20 that Manganaris does not teach about aggregating individual companies that have a rate or ratio with a negative base value. Manganaris teaches the general use of negative numbers when calculating an aggregate, and wherein the negative number is not excluded but rather included. It is old and well known that when performing calculations, that the result can be either negative or positive. Simply including negative results in reporting and further calculations is not a distinct teaching, it is a well known concept. While negative numbers are sometimes removed from reporting, it is old and well known that negative numbers can be included and not be dismissed. Manganaris simply shows one example of maintaining use of a negative value. Daily, reports are cited in which a company's earnings are down, or stock prices decrease, or any other number of scenarios in which negative numbers are reported.

Applicant argues on page 21 and 22 that neither Black nor Fernholz describe the claimed stability ratio and that the Examiner stated as much. Examiner herein contends that data regarding stocks and portfolios of stocks is gathered in mass. Data is gathered and stored in databases and from there, an infinite number of calculations can be performed per the choosing of the analyst. Black discloses performing a "variety of technical and fundamental analysis techniques and methodologies" where "a user can customize their analysis" (column 10) and manipulate the data to perform calculations and compare data. Fernholz discloses one such manipulation and customized analysis in which a user uses data including sold holdings, new holdings. While the name

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“stability ratio” is not assigned to such calculations, Examiner again notes that an infinite number of calculations can be performed on collected data and that accounting and financial analysis practice includes customized analysis based on a variety of technical and fundamental analysis techniques and methodologies as disclosed by Black.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Jennifer Liversedge whose telephone number is 571-272-3167. The examiner can normally be reached on Monday – Friday, 8:30 – 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Sam Sough can be reached at 571-272-6799. The fax number for the organization where the application or proceeding is assigned is 571-273-8300.



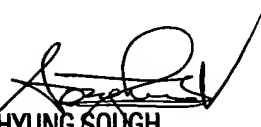
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jennifer Liversedge

Examiner

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